

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

TWD. – Appeal Petition filed by Sri Atapakala Ramakrishna S/o Late Sri Benna Swamy, Lagarai(Post), Rajavommangi(M),East Godavari Dist. filed under Section 7 of Act 16 of 1993 against the Proceedings, dated 15.9.2005 of the Dist. Collector, East Godavari,– Appeal Rejected – Orders – Issued.

SOCIAL WELFARE (CV.2) DEPARTMENT

G.O.Ms.No. 69

Dated:19-6-2009
Read the following:

1. Proceedings of the Collector, East Godavari Dist. No.Ref.C5(M) 1268/2001, dated 15.9.2005.
2. Appeal Petition filed by Sri Atapakala Ramakrishna, Lagarai, Rajavommangi(M), East Godavari District, dated 2.12.2005, before M(SW &TW).
3. Govt.Memo No.9988/CV.2/2005-2, dated 23.12.2005.
4. Letter from the District Collector, E.G., No. Ref.C5 (M)/976/2006, dated 31.8.2006.
5. Govt.Memo No. 9988/CV.2/2005-4, dated 20.8.2007.

Sri Atapakala Ramakrishna S/o late Sri Benna swamy, Lagarai (Post), Rajavommangi (M), East Godavari District filed an appeal petition under Section 7 of Act 16 of 1993 against the Proceedings first read above wherein the Konda Kapu Caste Certificate was cancelled by the District Collector, East Godavari. The petitioner has submitted the following grounds:

- i) The impugned order of the Collector is erroneous, contrary to law, weight of evidence.
- ii) The Collector ought not have acted basing on the recommendations of the District Level Scrutiny Committee for canceling the community certificate of the appellant in the light of the amendment brought to the Rules in respect of tribals.
- iii) The Collector failed to note that the jurisdiction of the District Level Scrutiny Committee for enquiring into the correctness of the community certificate obtained by tribals has been taken away by the Government by bringing an additional Sub-Rule 10 to Rule 9 of the Rules and conferring the same on the Commissioner of Tribal Welfare through G.O.Ms.No.79 Social Welfare (CV.2) Dept., dated:24-7-2002 with effect from 2-8-2002.
- iv) The Collector erred in passing an ex parte order of cancellation of the caste certificate of the appellant and the appellant ought to have been afforded a full opportunity, before passing the impugned order.
- v) The Collector ought not have entertained the enquiry after a long lapse of time and he should have seen that the appellant has already completed his degree.

2) In reference 3rd read above, the District Collector, East Godavari, was requested to furnish parawise remarks and connected records on the appeal petition filed by Sri Atapakala Ramakrishna. The District Collector, East Godavari District has furnished his remarks and connected records. The following are the remarks of the Collector, East Godavari:-

- i) The orders passed by the Collector are in accordance with the law after giving due opportunities to the petitioner.

- ii)** After the completion of observations made by the District Level Scrutiny Committee, the petitioner was given notices to attend before the District Collector, with all documentary evidences to support his caste claim but he did not file any recorded evidence in response to the notices already issued. On final hearing also, the petitioner was absent. Thereafter, it was construed that the petitioner has no claim to prove his caste. Hence, the caste certificate issued to the appellant was cancelled by the Collector.
- iii)** As per the G.O.Ms.No.79 S.W.(CV.2) passed by the Govt., sub rule"10" is added to the sub-rule (9) of rule 9 of Rules 1997 in respect of tribals, the Commissioner of Tribal Welfare, either suo-motto or on a written complaint by any person or on request made by an employer/educational institution / appointing authority shall enquire into the correctness of any community, nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, shall refer the case to concerned District Collector or the Govt. for its cancellation as per the procedure laid down in Section 5 of the Act." Accordingly on receipt of a report from the Tribal Welfare Dept., and request made by the Registrar "Acharya N.G.Ranga Agriculture University" (ANGRAU) the Collector forwarded the matter to the DLSC for enquiry.
- iv)** The contention of the petitioner is not correct. The advocate for the petitioner attended before the DLSC and requested to grant so many adjournments for filing evidence in support of his clients caste claim hence the enquiry took long lapse of time.
- v)** The DLSC examined birth and death particulars, land documents, marital relations, genealogical tree of the individual, school records and the report of the enquiry officers i.e, tribal welfare officer and concerned Mandal Revenue Officer and written explanations filed by the advocate on behalf of the petitioner and finally given opportunity to file documentary evidence in support of the petitioner's caste claim. Though the ample opportunity was given by the Collector to the appellant, he could not file any supported documents to prove his caste claim, though the burden of proof lies on the appellant. The DLSC examined all the material evidence available as per rules and came to a conclusion that the petitioner does not belong to Kondakapu (ST) and gave its findings after thorough enquiry. Further, the Collector, East Godavari has conducted enquiry as per the Act by giving sufficient opportunity to the appellant and passed orders canceling the caste certificate.

3). The case was posted for personal hearing on 23-7-2007,16-8-2007 and finally on 31-8-2007. Both Appellant and his counsel were present. On careful examination of the contentions / grounds for appeal, Enquiry reports, findings of District Level Scrutiny Committee, parawise remarks of the District Collector, East Godavari and copies of evidences adduced by the Appellant and material on file, it is found that:-

1. The Appellant is claiming ST status as belonging to Kondakapu based on his family / forefathers residence in Agency area and having lands there, his caste being recorded as such in school records and in the sale deed dated: 5-7-1945 i.e document No.792/1945 relating to Smt. Atapakala Mangamma W/o Chinnaiah who belongs to Kondakapu as recorded in the deed and judgment of the Special Asst. Agent. Peddapuram in LTRP No.43 of 1966 and the judgment of the Agency Divisional Officer, Peddapuram in LTRP No.30 of 1971.

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2. The grounds filed by appellant in the affidavit are not sustainable because under Sub rule (10) of Rule (9) which was issued in G.O.79, SW (CV.2) Dept., dated:24-7-2002 authorizing the Commissioner (TW) to enquire in case of tribals, it is not mentioned that the DLSC shall not enquire in the cases of tribals. The amendment given in the said G.O. is only an additionality. Even then, the Commissioner (TW) has also conducted enquiry in the case of the Appellant and the orders of the Collector in the impugned proceedings are mainly based on the findings of the enquiry by the Commissioner (TW).
3. The documentary evidence adduced by the Commissioner (TW) especially land records relating to the year 1938 have got more probative value than the evidences furnished by the Appellant.
4. As stated by the Collector in the impugned proceedings, the Settlement pattas and the Special Deputy Collector's Judgments may not be considered as per the observations of the Hon'ble High Court in W.P.No.11051/88.
5. As per the geneology, all his paternal relatives including his father are married in Kapu (OC) caste and all his brothers and sisters including the Appellant are also married in Kapu caste. On the above all reports considered that the appeal is devoid of merits.

4) Therefore, in view of the above and in exercise of the powers conferred under Section 7 of Act 16 of 1993, and rules made thereunder issued in G.O.Ms. No. 58, SW (J) Department, dated 12.5.1997, the appeal petition filed by Sri Atapakala Ramakrishna S/o late Benna Swamy, Lagarai (post), East Godavari is hereby rejected, upholding the proceedings No. Ref.C5 (M) 1268/2001, dated 15.9.2005 of the Collector, East Godavari. The stay granted by the Govt. in the reference 3rd read above are hereby vacated.

5) The records received from the District Collector, East Godavari in reference 4th read above are return herewith to him, and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,
PRINCIPAL SECRETARY TO GOVT.

To

The District Collector, East Godavari (WE) Original record file bearing No. R.Dis.No. C5/M/1268/01, containing pages Cf 406.
Sri Atapakala Ramakrishna S/o Late Sri Benna Swamy,
R/o Lagarai (Post), Rajavommangi (M),
East Godavari District.

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Copy to:

The PS to M(TW & RIAD) / PS to Prl.Secy.(TW)
The DTW., Hyderabad.
SF/SC.

//Forwarded:::By Order//

SECTION OFFICER